



**HARRIS
BANK**

I.C.C.
FEE OPERATION BR.

INTERSTATE COMMERCE COMMISSION

December 9, 1977

RECORDATION NO. 9127
DEC 19 1977-1 45 PM

7-3521130

DEC 19 1977

Fee \$10

CC Washington, D.C.

Secretary of Interstate
Commerce Commission
Washington, D. C. 20423

We are now enclosing for recordation with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act one original and two executed counterparts of that certain Conditional Sale Agreement dated as of December 2, 1977, between Harris Trust and Savings Bank, as Vendor, and Burlington Northern, Inc., as Purchaser.

The names and addresses of the parties to the transaction represented by such documents are as follows:

Vendor - Harris Trust and Savings Bank
111 West Monroe Street
Chicago, Illinois 60690
Attn: Timothy G. Goodsell

Purchaser - Burlington Northern, Inc.
176 East Fifth Street
St. Paul, Minnesota 55101
Attn: Mr. J. C. Smith

The general description of the equipment covered by the Conditional Sale Agreement is as follows: One American Model 5030 Diesel Electric Locomotive Crane, Serial No. L4160, bearing Burlington Northern identifying number BN 975316.

This letter of transmittal is executed by Timothy G. Goodsell, an officer of Harris Trust and Savings Bank, one of the parties to this transaction and who has knowledge of the matters set forth herein. After recordation, the original document should be returned to David Tallant, Jr. Esq., 111 West Monroe Street, Chicago, Illinois 60603.

The fee of \$50 for recordation of this document is enclosed herewith.

Very truly yours,

Timothy G. Goodsell
Commercial Banking Officer

PA

Wholly owned subsidiary of Harris Bankcorp, Inc.



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BANK**

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12/19/77

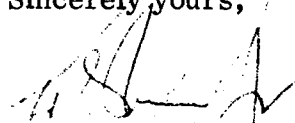
OFFICE OF THE SECRETARY

David Tallant, Jr. Esq.
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **12/19/77** at **1:45pm**,
and assigned recordation number(s) **9127**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

CONDITIONAL SALE AGREEMENT

DEC 19 1977 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT dated as of December 2, 1977, between HARRIS TRUST AND SAVINGS BANK ("Vendor") and BURLINGTON NORTHERN INC. ("Railroad").

WHEREAS, Vendor is willing to sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment (the "Equipment") described in Schedule A attached hereto;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. SALE AND DELIVERY.

The Vendor will sell and deliver to the Railroad, and the Railroad will purchase from the Vendor and accept delivery of and pay for as hereinafter provided, the Equipment. Vendor will instruct the manufacturer of the Equipment listed on Schedule A (the "Manufacturer") to deliver the Equipment to the Railroad at the place of delivery specified in Schedule A on or before the outside delivery day as specified in Schedule A. Upon delivery of the Equipment by the Manufacturer, it shall be presented to inspectors or authorized representatives of the Railroad for inspection, and, if the Equipment conforms to the specifications applicable thereto, such inspectors or representatives shall execute and deliver to the Vendor a certificate or certificates of acceptance (hereinafter called the "Certificate of Acceptance") stating that the Equipment has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 4.1 hereof. The obligation of the Vendor to sell the Equipment to the Railroad pursuant hereto is subject to the acquisition of title thereto by the Vendor from the Manufacturer, the delivery thereof to the Railroad by the Manufacturer and the acceptance of said Equipment by the Railroad as herein provided.

SECTION 2. PURCHASE PRICE AND PAYMENT.

2.1. The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor at its principal office in Chicago, Illinois in funds immediately available at such place of payment, the purchase price of the Equipment set forth on Schedule A,

or the amount to which the purchase price may be increased or decreased with the consent of the Railroad, (hereinafter sometimes referred to as the "Conditional Sale Indebtedness") as follows:

(a) With respect to a portion of the Conditional Sale Indebtedness, if any, in excess of \$267,740, payment shall be made to the Vendor on the date the Equipment is delivered to and accepted by the Railroad;

(b) With respect to the remaining portion of the Conditional Sale Indebtedness, payment shall be made as follows:

(1) On June 1, 1978, and on each June 1 and December 1 thereafter to and including December 1, 1984, the installment of interest accrued on the unpaid balance of such portion of the Conditional Sale Indebtedness at a rate of 8% per annum; and

(2) On June 1, 1978, and on each June 1 and December 1 thereafter to and including June 1, 1984, in addition to the installment of interest then payable, an installment of \$13,387; and

(3) On December 31, 1984, the entire remaining unpaid balance of the Conditional Sale Indebtedness.

2.2. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months. In the event any Conditional Sale Indebtedness shall fall due on a Saturday, Sunday or other legal holiday in the State of Illinois, interest shall continue to accrue thereon to and including the next succeeding business day on which the same is payable.

2.3. The Railroad will pay interest at the rate of 9% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

2.4. The Railroad shall have the privilege of prepaying in whole or in part (but if in part in an amount of \$10,000 or a multiple thereof) the Conditional Sale Indebtedness at any time and without premium or penalty. All such prepayments shall be made with interest accrued to the prepayment date and all partial payments shall be applied to the payment of the installments of the Conditional Sale Indebtedness in the inverse order of the maturities thereof.

SECTION 3. TITLE TO THE EQUIPMENT.

3.1. The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

3.2. When and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified herein, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and will pay to the Railroad any money paid to the Vendor, pursuant to Section 5 hereof and not therefore applied as therein provided.

SECTION 4. MARKING OF EQUIPMENT.

4.1. The Railroad will cause the Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of the Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of Harris Trust and Savings Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Vendor

to the Equipment and its rights under this Agreement. The Railroad will not place the Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not change the road number of the Equipment except with the consent of the Vendor and in accordance with a statement of new road number to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

4.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 5. CASUALTY OCCURRENCES.

5.1. In the event that the Equipment shall be or become lost, stolen, destroyed, or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that the Equipment has suffered a Casualty Occurrence, fully inform the Vendor in regard thereto. The Railroad shall, within 30 days of such event, pay to the Vendor a sum equal to the remaining unpaid balance of the Conditional Sale Indebtedness.

5.2. Any money paid to the Vendor pursuant to Section 5.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Vendor, to prepay the Conditional Sale Indebtedness or

to or toward the cost of new standard gauge railroad equipment which shall be of the same character as the Equipment described in Schedule A hereto to replace such Equipment and which Equipment shall be of a quality and have a value and utility at least equal to the Equipment as the Railroad shall direct in such written instrument. In case any such money shall be applied to prepay the Conditional Sale Indebtedness, it shall be applied as provided in Section 2.4, and if the amount applied is not sufficient to pay and satisfy such indebtedness and all interest accrued thereon and all other sums then owing by the Railroad to Vendor hereunder, the Railroad will forthwith upon demand of Vendor pay any deficiency to Vendor. In case of replacement the amount to be paid by the Vendor in respect of any replacing Equipment shall not exceed the lesser of the cost of such Equipment or the amount which such Equipment would have cost if acquired on the earliest date when any of such money was paid to the Vendor, and the Railroad shall pay any additional cost of such Equipment. Under no circumstance shall the Vendor be required under this Section 5.2 to make prepayments or to pay for replacements except out of funds paid to the Vendor pursuant to Section 5.1 hereof. The amount which any such replacing Equipment would have cost if acquired on the earliest date when any of such money was paid to the Vendor shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided. In the case of replacement, any funds not used to pay the cost of the replacing Equipment shall be applied to the prepayment of the Conditional Sale Indebtedness as provided in Section 2.4 hereof.

5.3. So long as no Event of Default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Section 5 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) commercial paper or finance company paper rated "A-1" or "P-1" or their equivalent by Standard & Poors Corporation or a comparable national rating agency or (iii) obligations issued or guaranteed by any state of the United States or the District of Columbia or any political subdivision of any such state or district rated "AA" or better by a national rating service, or (iv) repurchase agreements fully secured by any one or more of the obligations referred to in clause (i) above, or (v) in certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks in the United States of

America which are members of the federal reserve system having capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Vendor for application pursuant to this Section 5, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

5.4. The Railroad will cause any replacing Equipment to be plated or marked as provided in Section 4.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements.

5.5. Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Section 5, a written direction to apply money to or toward the cost of replacing an item of new standard gauge railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Equipment is new standard gauge railroad equipment and has been plated or marked as required by the provisions of this Section 5 and certifying the cost of such replacing Equipment, the amount which such replacing Equipment would have cost if acquired on the earliest date when any such money was paid to the Vendor and that the cost thereof does not exceed the fair value of such Equipment and that such replacing Equipment has a quality and value and utility at least equal to the Equipment replaced; and

(b) an opinion of counsel for the Railroad that title to such replacing Equipment is vested in the Vendor free and clear of all liens and encumbrances, and that such Equipment has come under and become subject to this Agreement.

5.6. If an Event of Default shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Section 5 shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Section 15 hereof.

5.7. In order to facilitate the sale, or other disposition of the Equipment in the event of a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after depositing with the Railroad the sum required by this Section 5, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

5.8. In the event that prior to the expiration of the term of this Agreement, the use of the Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Railroad's duty to pay the Conditional Sale Indebtedness shall continue for the duration of such requisitioning or taking. The Railroad shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 6. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor in respect of the amount of any local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof, and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon such Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by such Vendor, the Railroad shall reimburse such Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have submitted notice in writing to the Railroad at least five business days in advance of payment thereof.

SECTION 7. REPORTS AND INSPECTIONS.

7.1. On or before April 1 in each year, commencing with the year 1978, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Equipment then

subject to this Agreement, and such other information regarding the condition or repair of the Equipment as Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.1 hereof shall have been preserved or replaced.

7.2. The Vendor shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Vendor the existence and proper maintenance thereof during the continuance of this Agreement.

7.3. The Railroad will maintain a standard and modern system of accounting in accordance with generally accepted principles of accounting, and will furnish to the Vendor or its authorized representatives such information respecting the business affairs, operations and financial condition of the Railroad as may be reasonably requested; and, without any request, will furnish to the Vendor (i) as soon as available, but in any event within 45 days after the close of each quarter-annual accounting period of the Railroad, a copy of the condensed balance sheet, surplus analysis and a statement of revenues, expenses and income of the Railroad for such period, all in reasonable detail and showing in comparative form the figures for the corresponding date and period in the previous fiscal year, prepared by the Railroad and certified to by the Chief Accounting Officer thereof; and (ii) as soon as available, but in any event within 120 days after the end of each fiscal year, with a copy of the annual report to shareholders of the Railroad as prepared and certified by independent public accountants of recognized standing.

SECTION 8. POSSESSION, USE AND MAINTENANCE.

8.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Railroad, to the possession of the Equipment and the use thereof upon the railroad lines owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the railroad lines owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may also

be used upon connecting and other railroads in the usual interchange of traffic; provided, however, that such use shall be subject to all the terms and conditions of this Agreement and that the Railroad shall not assign or permit the assignment of the Equipment to service involving the operation and maintenance thereof outside the continental United States.

8.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify the Equipment without the written authority and approval of the Vendor which shall not be unreasonably withheld, provided that no such approval need be obtained if and to the extent such modification is required by Section 10 hereof. Any parts (except communications, signal and automatic control equipment and devices having a similar use which are added to the Equipment by the Railroad, the cost of which is not included in the purchase price of the Equipment and which are not required for the operation or use of the Equipment by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) installed or replacements made by the Railroad upon the Equipment shall be considered accessions to the Equipment and title thereto shall be immediately vested in the Vendor, without cost or expense to the Vendor.

SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment equal or superior to the security title of the Vendor, and any liens, encumbrances or charges which might be levied against or imposed upon the Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

9.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business, and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 10. RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

SECTION 11. INDEMNITIES.

11.1. The Railroad agrees to indemnify, protect and hold harmless the Vendor against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort, patent infringements and counsel fees, arising out of retention by the Vendor of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness and the conveyance of the Equipment, as provided in Section 3.2 hereof, or the termination of this Agreement in any manner whatsoever.

11.2. The Railroad, after delivery to and acceptance by the Railroad pursuant to Section 1 hereof, will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the Equipment.

11.3. THE SALE BY THE VENDOR TO THE RAILROAD HERE-
UNDER SHALL BE ON AN "AS-IS WHERE-IS BASIS" WITHOUT ANY
WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BEING MADE BY THE
VENDOR TO THE RAILROAD WITH RESPECT TO THE EQUIPMENT OR ITS
USE OR OPERATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY
OR WARRANTY OF MERCHANTABILITY FOR PARTICULAR PURPOSES, it
being recognized by the Railroad that this transaction is
a financing transaction on the part of the Vendor and that
the Vendor, therefore, does not accept or assume any such
responsibility or liability. To the extent legally possible,
the Vendor hereby assigns, transfers and sets over unto the
Railroad all warranties, express or implied, made by the
Vendor to the Manufacturer and authorizes the Railroad, either
in the name of the Vendor or in its own name, to take such
action, including institution of legal proceedings, as may
be necessary to enforce any such warranty or warranties, but
at the sole cost and expense of the Railroad.

SECTION 12. PATENT INDEMNITIES.

The Vendor shall not be responsible to the Railroad
on account of any design, article or material used in or in
connection with the Equipment which is claimed to infringe
on or to constitute contributory infringement with respect
to any patent or other right. To the extent that the Manufac-
turer shall indemnify the Vendor against, or otherwise be
liable to the Vendor for, any such claims, the Vendor hereby
assigns, transfers and sets over to the Railroad all of the
Vendor's rights as against the Manufacturer with respect
thereto and authorizes the Railroad to enforce any such in-
demnity or liability as against the Manufacturer, either in
its own name or the Vendor, but at the sole cost and expense
of the Railroad.

SECTION 13. ASSIGNMENTS.

13.1. Except as otherwise provided in Section 8.1
hereof, the Railroad will not sell, assign, transfer or other-
wise dispose of its rights under this Agreement or transfer
the right to possession of the Equipment without first obtain-
ing the written consent of the Vendor. An assignment or trans-
fer to a railroad company or other purchaser which shall acquire
all or substantially all the railroad lines of the Railroad,
and which by execution of an appropriate instrument satisfactory

to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

13.2. All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad, of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

13.3. In the event of any such assignment or successive assignment by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of the Equipment so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to any successor assignee in case the first assignee is an agent or trustee) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

SECTION 14. DEFAULTS.

14.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 2 or 5 hereof and such default shall continue for ten days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance for more than 30 days after written notice from the Vendor specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Vendor or in connection with this Agreement, proves untrue in any material respect as of the date of issuance or making thereof; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have

the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of the Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire remaining unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of said indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

14.2. The Vendor may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver, the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 15. REMEDIES.

15.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire remaining balance of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any part thereof, without

liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 15 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

15.2. In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the railroad lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of the Equipment in any reasonable manner.

15.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 14.2 hereof), the Vendor (after retaking possession of the Equipment as hereinbefore in this Section 15 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid Conditional Sale Indebtedness, together with interest thereon and all other payments due hereunder and make such disposition thereof as the

Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 19 hereof, and to any other persons to whom the law may require notice, within 30 days after the Conditional Sale Indebtedness shall have been declared immediately due and payable by the Vendor as above provided. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 15.3 object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 15.

15.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that the Railroad shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Vendor may bid for and become

the purchaser of the Equipment so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due or owing to the Vendor from the Railroad hereunder.

15.5. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

15.6. All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, second to the payment of interest on the Conditional Sale Indebtedness, and third to the payment of the unpaid Conditional Sale Indebtedness. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

15.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

15.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 16. APPLICABLE STATE LAWS.

16.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

16.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

SECTION 17. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 18. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission and otherwise as may be required by

law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

SECTION 19. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses;

(a) to the Railroad: Burlington Northern Inc., Burlington Northern Building, 176 East Fifth Street, St. Paul, Minnesota 55101, Attention: Assistant Vice President - Financial Planning;

(b) to the Vendor: Harris Trust and Savings Bank, 111 West Monroe Street, Chicago, Illinois 60690; and

(c) to any assignee of the Vendor, or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 21. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 22. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedule relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

SECTION 23. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 24. PAYMENT OF EXPENSES.

The Railroad will pay all stamp or other taxes, if any, incident to, and the reasonable cost and expense of, the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement or of any assignment thereof, or of any instrument supplemental or amendatory of this Agreement, and of any certificate of the payment in full of the Conditional Sale Indebtedness.

SECTION 25. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad shall be a party, or in case of any sale of all or substantially all the assets of the Railroad, the corporation resulting from such consolidation or merger (if other than the Railroad) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder not then performed by the Railroad, and shall become entitled to all rights hereunder of the Railroad

SECTION 26. FURTHER SHOWINGS.

Simultaneously with the Equipment being delivered to and accepted by the Railroad hereunder and as a condition to the obligation of the Vendor hereunder to sell the same to the Railroad pursuant hereto, the Railroad will deliver to Vendor (i) a resolution of the Board of Directors of the Railroad (or Executive or other duly authorized Committee thereof) authorizing the execution and delivery of this Agreement by the Railroad and certified as of such date by the Secretary or other authorized officer of the Railroad, and (ii) an opinion of counsel for the Railroad to the effect that: (a) the Railroad is a duly organized and

existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (b) this Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms; and (c) the execution and delivery by the Railroad of this Agreement does not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Railroad, or any indenture, agreement, or other instrument to which the Railroad is a party or by which it is bound; (d) security title to the Equipment is duly vested in the Vendor, free and clear of any other claim, lien or interest except that of the Railroad under this Agreement; (e) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement; and (f) this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor in the United States of America.

SECTION 27. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seal to be hereunto affixed, duly attested, all as of the date first above written.

(Corporate Seal)
ATTEST:

ps mason

Assistant Secretary

(Corporate Seal)
ATTEST:

[Signature]

Assistant Secretary

HARRIS TRUST AND SAVINGS BANK

By

[Signature]
Its Vice President

BURLINGTON NORTHERN INC.

By

[Signature]
Its

EXECUTIVE VICE PRESIDENT - FINANCE

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

On this 7th day of December, 1977, before me, a notary public in and for the County and State aforesaid, personally appeared Randall B. Becker to me personally known, who, being by me duly sworn, says that he is a Vice President of Harris Trust and Savings Bank, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Betty Persen
Notary Public in and for the State
and County aforesaid

(Notarial Seal)

My Commission Expires: My commission expires February 21, 1980

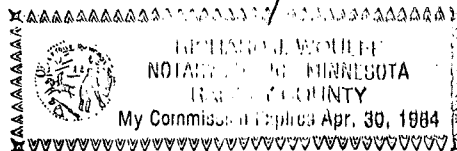
STATE OF Minnesota)
) SS
COUNTY OF Ramsey)

On this 2nd day of December, 1977, before me, a Notary Public in and for the County and State aforesaid, personally by me duly sworn, says that he is Executive Vice President-Finance and Administration of Burlington Northern Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woullf
Notary Public

(Notarial Seal)

My Commission expires:



SCHEDULE A
TO CONDITIONAL SALE AGREEMENT

MANUFACTURER.....American Hoist and Derrick Company

DESCRIPTION OF EQUIPMENT..... One American Model 5030 Diesel
Electric Locomotive Crane,
Serial No. L4160, bearing identify-
ing number BN 975316

SPECIFICATIONS..... Per Burlington Northern Purchase
Order No. CA 05886-7 dated
8/16/77

PURCHASE PRICE \$267,740

DELIVER TO Burlington Northern Inc.

PLACE OF DELIVERY..... Lincoln, Nebraska

ESTIMATED DELIVERY DATE..... December 15, 1977

OUTSIDE DELIVERY DATE..... January 31, 1978